Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

Cheryl Bookrum,

Petitioner

v.

David C. Bookrum, Melyne F. Bookrum, Office of Servicemember's Group Life Insurance, a division of the Prudential Insurance Company of America, and Does 1 through 10, inclusive,

Respondents

On Petition for Writ of Certiorari
To the US Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Were *Wissner v Wissner*, 338 US 655 and *Ridgway v Ridgway*, 454 US 46, correctly decided?

PARTIES

All parties are as listed in the caption. Petitioner is not a corporation.

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CITATIONS

None of the underlying decisions have been reported.

JURISDICTIONAL STATEMENT

The judgement of the Ninth Circuit was entered on April 17, 2003. This court may review it on certiorari pursuant to 28 USC 1254.

STATUTE INVOLVED

The statute involved in this case is 38 USCS §1970 (2002), the relevant portions of which are paragraphs (a) and (g), which read:

§ 1970. Beneficiaries; payment of insurance

(a) Any amount of insurance under this subchapter [38 USCS § § 1965 et seq.] in force on any member or former member on the date of the insured's death shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date of the insured's death, in the following order of precedence:

First, to the beneficiary or beneficiaries as the member or former member may have designated by a writing received prior to death (1) in the uniformed services if insured under Servicemembers' Group Life Insurance, or (2) in the administrative office established under section 1966(b) of this title if separated or released from service, or if assigned to the Retired Reserve, and insured under Servicemembers' Group Life Insurance, or if insured under Veterans' Group Life Insurance;

Second, if there be no such beneficiary, to the widow or

widower of such member or former member;

Third, if none of the above, to the child or children of such member or former member and descendants of deceased children by representation;

Fourth, if none of the above, to the parents of such member or former member or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such member or former member;

Sixth, if none of the above, to other next of kin of such member or former member entitled under the laws of domicile of such member or former member at the time of the insured's death.

•••

(g) Any payments due or to become due under Servicemembers' Group Life Insurance or Veterans' Group Life Insurance made to, or on account of, an insured or a beneficiary shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to (1) collection of amounts not deducted from the member's pay, or collected from him by the Secretary concerned under section 1969(a) of this title, (2) levy under subchapter D of chapter 64 of the Internal Revenue Code of 1986 (26 U.S.C. 6331 et seq.) (relating to the seizure of property for collection of taxes), and (3) the taxation of any property purchased in part or wholly cut of such payments.

STATEMENT OF THE CASE

This is a suit to recover the proceeds of a life insurance policy issued pursuant to the Servicemembers Group Life Insurance program. Petitioner is the widow of the insured decedent, David J. Bookrum. The only significant asset the decedent left behind is the SGLI policy, which the decedent left to his parents, rather than to his wife and dependent minor child. The parents and the administrator of the SGLI program are the respondents.

In California, a father's obligation to support his child survives death. *Taylor v. George* , 34 Cal.2d 552 (1949). If there were assets in the estate, it could be charged for the support of the child and the surviving spouse, California Probate Code 6540.

But insurance policies such as SGLI are outside the estate. For that reason, California Family Code 1100 and 1101 protect spouses who do not have primary control of a community asset by imposing upon spouses a fiduciary duty to each other with respect to community property. A breach of this duty entitles the surviving spouse to protect and reclaim her undivided one half interest in the community asset, and further provides not only for attorneys fees but for recovery of 100% of the asset in the appropriate case, Family Code 1101(g).

However, SGLI is a creature of federal law, and has been held not subject to California's community property laws as embodied in the aforementioned Family Code. Since this leaves petitioner and her minor dependent child without remedy, this challenge to *Wissner v Wissner*, 338 US 655 and *Ridgway v Ridgway*, 454 US 46 ensued.

After service of the summons and complaint, defendants brought a motion to dismiss, which was granted by the District Court.

This case raises an issue of federal law, so that

jurisdiction in the District Court was appropriate under 28 U.S.C. §§ 1331. Jurisdiction was granted to the Ninth Circuit by 28 USC §§ 1291. All of the individual parties are residents of the Central District of California and the dispute arose there.

The appeal to the Ninth Circuit was filed was filed on Nov. 5, 2002 from the District Court's order granting defendant's motion to dismiss entered on October 28, 2002.

ARGUMENT

To the question, then: Were *Wissner v Wissner*, 338 US 655 and *Ridgway v Ridgway*, 454 US 46, correctly decided?

Petitioner contends that the answer to the question presented is no, and that therefore what she seeks is not so much a *change* in the law as a *restoration* of it.

> "Although adherence to precedent is not rigidly required in constitutional cases, any departure from the doctrine of stare decisis demands special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212, 81 L. Ed. 2d 164, 104 S. Ct. 2305 (1984). In deciding whether this case presents such justification, we recall Justice Frankfurter's admonition that "stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder, and verified by experience." *Helvering v. Hallock*, 309 U.S. 106, 119, 84 L. Ed. 604, 60 S. Ct. 444 (1940). Remaining true to an "intrinsically sounder" doctrine established in prior cases better serves the values of stare decisis than would following a more recently decided case inconsistent with the decisions that came before it; the latter course would simply compound the recent error and would likely make the unjustified break from previously established doctrine complete. In such a situation, "special justification" exists to depart from the recently decided case.

Adarand Constructors v. Pena, 515 U.S. 200 at 231 (1995)

Using the above formulation, it is *Wissner* and *Ridgeway* that are the anomalies, which stand out like sore thumbs from the rulings that came before and after them.

Only Justices Rehnquist, O'Connor and Stevens remain from the Court that decided *Ridgway* in 1981. Significantly, both the Chief Justice and Justice Stevens dissented from that decision, while Justice O'Connor did not participate.

The Court has a long history of an honored dissent carrying the day at a later time. Petitioner asserts that the dissents in *Wissner* and *Ridgway* make both better sense and better policy, and this is no Quixotic venture on petitioner's part, for the undermining of those decisions by Justices of this Court has already begun.

> "As the Court acknowledges, *ante*, at 631-632, until *Ridgway*, we had carefully refused to hold that anti-attachment provisions similar to § 3101(a) shield the beneficiary from the support claims of his spouse and children." O'Connor, concurring in *Rose v Rose*, 481 U.S. 619 at 639; 107 S. Ct. 2029; 95 L. Ed. 2d 599 (1987).

The *Rose* concurrence places Justice O'Connor squarely with the *Ridgway* dissenters, and if there were any doubt, she adds just a few lines later:

> "In short, the support obligation has always been granted a special place in our law. While the broad language of § 3101(a) seems clearly meant to bar the ordinary creditor's attachment, I cannot find, in light of this Nation's common law tradition, that the language of § 3101(a) expresses anything like

> the unequivocal congressional intent necessary to bar family members from enforcing the veteran's support obligation. The contrary holding in *Ridgway* is hopelessly anomalous, and should be relegated to the status of "a derelict on the waters of the law." *Lambert v. California*, 355 U.S. 225, 232 (1957) (Frankfurter, J., dissenting)." Id.

At issue in *Rose* was whether a state court could compel a veteran to pay child support out of service connected disability benefits which had an anti-attachment provision (38 USC 3101). The majority concluded that it could, and Justice O'Connor's concurrence (notably joined by Justice Stevens) argued that since the statutory anti-attachment language at issue in 38 USC 3101 was essentially the same as that at issue in *Ridgway* (and thus, in the instant case) the two cases could not be harmonized and *Ridgway* should be dispensed with.

As Justice O'Connor also noted, even *Wissner,* upon which *Ridgway* relied "had carefully refused to hold that anti-attachment provisions similar to § 3101 shield the beneficiary from the support claims of [the veteran's] spouse and children.". Id.

Let us turn, then, to the analysis in *Wissner*. The majority begins by acknowledging both the longstanding nature of community property and that prior courts had not hesitated to hold such anti-attachment language did not exempt funds from the support claims of the veteran's wife and children, 338 US at 659-660. What the *Wissner* majority does, however, is to make a distinction between the support obligation and community property, so that community property claims can be pre-empted, but support obligations cannot. Id.

Is such a distinction tenable? Manifestly it is not. It

certainly did not impress the *Wissner* dissent:

> "The Court has sought to distinguish, unsuccessfully I think, the many cases holding that payments received as pension, disability insurance, or veterans' compensation are not exempted from claims for alimony or family support by exemption statutes in the pattern of § 454a. Exhaustive discussions may be found in *In re Bagnall's Guardianship, 238 Iowa 905, 29 N. W. 2d 597; Schlaefer v. Schlaefer, 71 App. D. C. 350, 112 F.2d 177.* See also *Gaskins v. Security-First Nat. Bank of Los Angeles, 30 Cal. App. 2d 409, 86 P. 2d 681; Hollis v. Bryan, 166 Miss. 874, 143 So. 687.* Cf. Note, *11 A. L. R. 123* and succeeding annotations." Minton, dissenting, 338 US at 663, fn2. See also, *White v US*, 270 US 175 (1926).

In other words, there is a prior and substantial body of law which holds that anti-attachment laws do not exempt the claims of the veteran's family for support. There is now also subsequent law (*Rose*) to that effect. It is only *Wissner* and *Ridgway* that stand out as anomalies. The *Ridgway* majority saw "no significant difference between the community property interest at issue in *Wissner* and the property settlement giving rise to the instant action". 454 US at 61, fn11. In that, at least, they were correct, which is why <u>both</u> *Ridgway* and *Wissner* must be discarded.

Even the *Wissner* majority recognized the semantic quagmire it was creating by trying to distinguish between community property and the support obligation. "There are, of course, support aspects to the community property principle, and in some cases they may be of considerable importance." 338 US at 660, fn4.

Petitioner argues that in the instant case, where there are no other assets left by the decedent, they are not merely of considerable, but of paramount, importance. Petitioner further notes that in *Wissner* there was no issue of children or their support.

Setting aside the *Ridgway* anomaly, *Wissner* and *Rose*, taken together, create a class whereby those with court ordered support have more protection than those in intact families, or newly split families that had not yet secured such a court order by the time of the veteran's death. In other words, a divorce decree provides better protection for a veteran's dependent family than a marriage. This cannot possibly be the result intended by Congress. Where a statute is capable of more than one reasonable interpretation, but one of those interpretations brings about an unpalatable result, that is a clue that the interpretation with the unpalatable result is incorrect.

Community property ***is*** support. It is the recognition that both spouses contribute significantly to the family enterprise, (which includes the support of its children) no matter what the relative earnings of the marriage partners. It is intended to protect the property interests of both spouses, and what is that property for except the support, maintenance, and living of the family? California calls the alienation of this community asset nothing less than a breach of fiduciary duty. That is a breach of trust.

And how is it that Congress can by legislative fiat declare certain property outside the reach of the 5th amendment? The *Wissner* majority engaged in a tautology when it dismissed out of hand the wife's constitutional claims. *Wissner's* interpretation of the servicemember's life insurance statutes also result in them depriving intact and newly separated families of 5th amendment equal protection.

Returning, then, to *Adarand Constructors*, supra, we see that there is in fact "a prior doctrine more embracing in its

scope, intrinsically sounder, and verified by experience". It is that line of cases cited by the dissent in *Wissner*, including *Bagnall*, *Schlaefer*, and others, which recognize and protect the support obligation, do not make a tortured and nonsensical distinction between support and community property, and do not equate familial obligations with those to mere commercial creditors. It is a line that was restored by *Rose* and interrupted only by *Wissner* and *Ridgway*. The courts should not "compound the recent error and ... make the unjustified break from previously established doctrine complete." This is just the situation in which "'special justification' exists to depart from the recently decided case[s]." *Wissner* and *Ridgeway* should be overruled. And this is hardly an academic point, since, as this petition is being written, our armed forces remain under hostile fire in Iraq, not to mention service in Afghanistan, Liberia, and a host of other dangerous places.

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APPENDIX

Filed April 17, 2003
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Clerk, US Court of Appeals

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHERYL BOOKRUM,	No. 02-56916
Plaintiff-Appellant,	D. C. No. CV-02-06376 FMC
vs.	MEMORANDUM*
DAVID C. BOOKRUM; et. al.,	
Defendants-Appellees.	

Appeal from the United States District Court
for the Central District of California
Florence Marie Cooper, District Judge, Presiding

Submitted April 7, 2003**

Before: BROWNING, RYMER, and KLEINFELD, Circuit

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*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

**This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Judges

Cheryl Bookrum appeals the District Court's judgment dismissing her action seeking to recover, based on California's community property law, proceeds of a life insurance policy issued to her husband, under which she is not a beneficiary. We have jurisdiction pursuant to 28 U. S. C. section 1291. We review de novo, *Lipton vs. Pathogenesis Corp.*, 284 F. 3rd 1027, 1035 (9th Cir. 2002), and we affirm.

The policy at issue here is governed by federal law under the servicemember's group life insurance act of 1965. See 38 USC sections 1965-1980. The Supreme Court held in both *Wissner vs. Wissner*, 338 US 665 (1950), and *Ridgway vs. Ridgway*, 454 US 46 (1981), that the servicemember's designation of beneficiaries determines to whom the proceeds of the insurance should be paid, notwithstanding any contrary provisions of state law. The District Court properly relied on these cases despite Bookrum's contention that they were wrongly decided.

Affirmed.

Entered October 28th 2002
Central District of California
Filed October 28th 2002
Central District of California

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Cheryl Bookrum,
Plaintiff,

v.

David C. Bookrum, et al.,
Defendants.

CV 02-06376 FMC (FMOx)
ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This matter is before the court on Defendant Prudential Insurance Company of America's Motion to Dismiss (docket No. #7). The court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for October 28th, 2002, is removed from the court's calendar. For the reasons set forth below, the court hereby grants the motion to dismiss.

Plaintiff seeks to recover proceeds of a life insurance policy issued to her deceased husband. A life insurance policy designated the decedent's parents as beneficiaries. Plaintiff seeks to recover the proceeds notwithstanding this designation.

The policy at issue is governed by federal law regarding armed servicemember's life insurance policies. *See* 38 USC sections 1965-1980. Plaintiff candidly concedes that in order for her claim to succeed, this Court would be required to ignore the dictates of the Supreme Court decisions of *Wissner vs. Wissner*, 338 US 655, 70 S. Ct. 398 (1950), and *Ridgway vs. Ridgway*, 454 US 46, 102 S. Ct. 49 (1981). In both Wissner and Ridgway, the Supreme Court held the servicemember's designation of beneficiaries determined to whom the proceeds of the insurance would be paid,

notwithstanding contrary provisions of state law.

Accordingly, the court hereby grants defendant's motion to dismiss. The court hereby dismisses with prejudice all claims as to all defendants.

Dated: October 25th, 2002

Signed: Florence-Marie Cooper
United States District Court

(Please note that although Judge Cooper's signature is dated the 25th and the order was filed and entered on the 28th, there is no separate judgement and so none is attached.)